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September 3, 2004

Mrs. Marlene Dortch
Federal Communications Commission
Office of Secretary
445 12th Street, SW
Room TW – 204B
Washington, DC 20554

Proceeding	96-128
Document Type:	CO

Dear Secretary Dortch,

Pursuant to comments filed by the Payphone Association of Ohio on August 26, 2004, in Case 96-128, supporting documents were to be filed under separate cover. Please docket these documents with cover as a supplemental comment filing (CO) or amend our original comments to include this submission.

Documents included in this filing:

Document # 1. Ameritech's Notice to Ohio's Commission of Self Certification, indicating that Ameritech met all of the FCC requirements and is eligible for dial around compensation effective 4/15/97. Ohio case no. 97-545-TP-UNC, in its entirety.

Important issues:
Ameritech mentions that information was provided to the PUCO staff under separate cover which could be used to verify that their rates complied with the FCC mandated new services test ("NST").

In paragraph five(5) of this document, Ameritech concedes that it did not file revised tariffs as ordered by Ohio's Commission, and is relying on a filing made on August 5, 1996.

The first appendix to case No. 97-545 is a copy of the FCC ordered released April 15, 1997, commonly referred to as the waiver order.

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Document #2: Copy of the cover letter that Ameritech provided to the PUCO Staff, as mentioned in their self certification with the data to be used to verify Ameritech's rates were NST compliant.

Important Issues:
This document was prepared on the same date by the same individual who self certified Ameritech's compliance and eligibility to collect dial around. Each document mentions the other, and they are in effect a continuation of the process.

In paragraph three of the letter, Mr. Cyvas specifically cites the April 15th FCC order, and the clarification by the FCC of its intent to require the LEC's state tariff's to meet the "new services test".

In paragraph four of the letter, Mr. Cyvas indicates that Ameritech has agreed to refunds if a state commission, upon review requires any tariffed rates to be revised downward, as reflected in the FCC's April order.

Document #3: A copy of the Tariff that was submitted to Ohio's Commission by Ameritech on June 23, 1997 in response to a May 22nd, 1997 entry in Ohio Case No. 96-1310. This filed tariff was later approved by Ohio's Commission on September, 25, 1997.

Important Issues:
Ohio's Commission has identified this tariff, as the tariff that in addition to being compliant with their May 22nd , 1997 order, satisfied Ohio's prior order issued December 19, 1996. The earlier order required all LECs operating in Ohio to file revised tariffs for payphone **access lines** that complied with the requirement of 96-128. The PAO specifically noted that Ameritech failed to file these revised tariffs or to comply with the NST pricing requirements as established in FCC 96-128. Ohio's Commission identified this tariff on page 2, paragraph 3 of an entry and opinion issued September 1, 2004.

This tariff does not in any way address the pricing for payphone access lines as ordered on December 19, 1996 in Ohio 96-1310. It is very specific, and is consistent with certain and specific requirements of 96-128 and the requirements established on May 22nd. However, it does not address all of the requirements established in FCC 96-128, and does not purport to include a revised tariff for **access lines**.

More conclusive is the absence of the tariff pricing sheets that control the prices charged by Ameritech for IPP service. The tariff sheets that contain the access line pricing for the service offered to the IPP's in Ohio is found within Ameritech's Tariff PUCO No. 20, Part 13, Section 2, Sheet No 15 and the tariff sheet for the local usage is PUCO No. 20, Part 13, Section 2, Sheet No 16. Neither of these sheets are included in the Tariff filed on June 23, 1997, that was later approved on September 25, 1997.

If there are any questions regarding this submission, please contact me at your earliest convenience.

Sincerely,

Howard Meister
President

Document #1

Ameritech

150 East Gay Street
Room 19-?
Columbus OH 43215-311?

May 16, 1997

Ms. Daisy Crockron
Docketing Department
Public Utilities Commission of Ohio
180 East Broad Street, 10th Floor
Columbus, Ohio 54215-3793

Re: Ameritech Ohio
Case No. 97-545-TP-UNC

Dear Ms. Crockron:

With this submission, Ameritech Ohio certifies that it has met all FCC requirements and is eligible and will invoice for payphone telephone set compensation effective 4/15/97. In certifying that Ameritech has met all FCC requirements, the Company also provides the necessary cost tests as required by the FCC in Docket No. 96-128 so the Staff can verify that its state payphone tariffs satisfy the "new services test" required by those Orders and Rules (see Exhibits A, B, and C). These tests were provided to Staff on a confidential basis under separate cover.

At this time, the Company anticipates that no action before the Public Service Commission is necessary or required.

Following are the Company's assertions that it fully complies with the Payphone Order:

1) **Ameritech has an effective cost accounting manual (CAM) filing.**

The FCC Order approving the ACAM, adopted and released on April 15, 1997, is enclosed as Exhibit D. The Ameritech Cost Allocation Manual (ACAM), filed with the FCC on October 22, 1996, became effective on April 15, 1997 coincident with the approval of Ameritech's Comparably Efficient Interconnection (CEI) Plan (Exhibit E).

2) **Ameritech has an effective Federal CCL tariff (there is no state CCL tariff) reflecting a reduction for deregulated payphone costs and reflecting additional multi-line subscriber line charge (SLC) revenue.**

Ameritech, as part of its introduction of the interstate Pay Telephone Set Use Fee tariff, had identified and removed payphone-related cost elements from its interstate access charges effective May 24, 1996. That filing, made under Transmittal No. 953, is enclosed as Exhibit F.

The interstate Pay Telephone Set Use Fee Tariff was terminated effective April 15, 1997 per Transmittal No. 1075 (Exhibit G). The inclusion of the multi-line subscriber line charge was reflected in Ameritech's price cap adjustment filings, Transmittal Nos. 1037, 1055, and 1056 (Exhibits H, I, and J).

As a result of the above actions, all payphone costs have been removed from interstate access charges pursuant to Section 276 of the Telecommunications Act of 1996.

3) Ameritech has effective interstate tariffs reflecting removal of charges that recover the costs of payphones and any intrastate subsidies.

See response to requirement 2 above.

4) Ameritech has deregulated and reclassified or transferred the value of payphone CPE and related costs as required in the Report and Order.

On September 20, 1996, the FCC adopted and released a Report and Order implementing the pay telephone reclassification pursuant to the Telecommunications Act of 1996. The Payphone Order required the incumbent local exchange carriers (ILECs) to reclassify their payphone assets and related expenses to non-regulated status no later than April 15, 1997. The Payphone Order required ILECs to "establish whatever Part 64 cost pools are needed and file revisions to their cost allocation manuals (CAMs) within sixty (60) days prior to the effective date of the change." On April 15, 1997, the FCC adopted and released an Order finding that the Ameritech Operating Companies satisfied the requirements of the Payphone Order based on its ACAM filing (see response to first requirement above). Accounting reports reflecting implementation of the revised ACM will become available in June, 1997 reflecting the changes that became effective on April 15, 1997.

5) Ameritech Ohio has in effect intrastate tariffs for basic payphone service (for "dumb" and "smart" payphones).

Ameritech has tariffs for both "dumb" (COCOT Line) and "smart" (COCOT-Coin Line) payphone access lines. These tariffs became effective August 5, 1996, and September 19, 1996, respectively. A current copy of these tariffs is enclosed as Exhibit K .

6) Ameritech Ohio has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.

The following intrastate and interstate tariffs for unbundled functionalities were filed pursuant to the FCC Orders and are effective as shown below:

Unbundled Service	**Transmittal No.**	**State/Interstate Effective Date**
Restricted Coin Access	1035	1/30/97
Outgoing Only	1035	1/30/97

Transmittal No. 1035 is attached as Exhibit L.

Please date stamp the enclosed extra copy of this filing. Should have any questions concerning this filing, please do not hesitate to contact the undersigned.

Very truly yours,

Vitas R. Cyvas

Vitas R. Cyvas
Director - Regulatory Affairs

Enclosures

Exhibit A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 97-805

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

ORDER

Adopted: April 15, 1997 Released: April 15, 1997

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau ("Bureau") grants a limited waiver of the Commission's requirement that effective intrastate tariffs for payphone services be in compliance with federal guidelines, specifically that the tariffs comply with the "new services" test, as set forth in the Payphone Reclassification Proceeding, CC Docket No 96-128.[1] Local exchange carriers ("LECs") must comply with this requirement, among others, before they are eligible to receive the compensation from interexchange carriers ("IXCs") that is mandated in that proceeding.[2]

2. Because some LEC intrastate tariffs for payphone services are not in full compliance with the Commission's guidelines,[3] we grant all LECs a limited waiver until May 19, 1997 to file intrastate tariffs for payphone services consistent with the "new services" test.

[1] For purposes of this Order, the term "intrastate tariff" refers to a tariff filed in the state jurisdiction and the term "interstate tariff" refers to a tariff filed in the federal jurisdiction. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Payphone Order"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("Order on Reconsideration"), appeal docketed sub nom. Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996) (both orders together "Payphone Reclassification Proceeding").

[2] Order on Reconsideration at paras. 131-132.

[3] Id. at para. 163.

pursuant to the federal guidelines established in the Order on Reconsideration, subject to the terms discussed herein.[4] This waiver enables LECs to file intrastate tariffs consistent with the "new services" test of the federal guidelines detailed in the Order on Reconsideration and the Bureau Waiver Order,[5] including cost support data, within 45 days of the April 4, 1997 release date of the Bureau Waiver Order and remain eligible to receive payphone compensation as of April 15, 1997, as long as they are in compliance with all of the other requirements set forth in the Order on Reconsideration.[6] Under the terms of this limited waiver, a LEC must have in place intrastate tariffs for payphone services that are effective by April 15, 1997. The existing intrastate tariffs for payphone services will continue in effect until the intrastate tariffs filed pursuant to the Order on Reconsideration and this Order become effective. A LEC who seeks to rely on the waiver granted in the instant Order must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the existing tariffed rates. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.

3. The Bureau takes this action, in response to a request by the RBOC Coalition[7] and Ameritech, pursuant to the authority delegated to it by the Commission in the Order on Reconsideration to determine whether a LEC has met the requirements of the Payphone Reclassification Proceeding prior to receiving compensation.[8] The instant Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.[9]

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[4] Id. This Order does not waive any of the other federal guidelines for intrastate payphone service tariffs. See para. 10, below.

[5] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Order, DA 97-678 (Com. Car. Bur., rel. Apr. 4, 1997) ("Bureau Waiver Order").

[6] Order on Reconsideration at paras. 131-132. The Bureau Waiver Order modified these requirements slightly by granting all LECs a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions, to the extent necessary, to enable LECs to file the required federal tariffs within 45 days after the April 4, 1997 release date of that order, with a scheduled effective date no later than 15 days after the date of filing. The Bureau also waived the requirement, for a period of 60 days from the release date of Bureau Waiver Order, that these interstate tariffs for unbundled features and functions be effective before the LECs are eligible to receive payphone compensation. Bureau Waiver Order at paras. 20-23.

[7] The RBOC Coalition consists of all of the Bell Operating Companies ("BOCs") except Ameritech. This Order uses the term "RBOC Coalition" to refer to the petitioners requesting the waiver, which includes Ameritech.

[8] Order on Reconsideration at para. 132. See also id. at para. 163. These delegations of authority to the Bureau are consistent with Section 0.91 of the Commission's rules, 47 C.F.R. § 0.91.

[9] 47 U.S.C. § 276(b)(1).

II. BACKGROUND

4. In the Payphone Reclassification Proceeding, the Commission noted that Telecommunications Act of 1996 fundamentally changed telecommunications regulation. It stated that the 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[10] To that end, the Commission advanced the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public. . .".[11] It sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, the Commission recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, it concluded that it would continue, for a limited time, to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.[12]

5. In the Payphone Order, the Commission concluded that, consistent with Section 276 of the Act, PSPs are to be compensated for "each and every completed intrastate and interstate call" originated by their payphones.[13] For the first year of the compensation provided by the Payphone Order, the Commission required those IXCs with annual toll revenues in excess of $100 million to pay PSPs proportionate shares, based on their respective market shares, of interim, flat-rated compensation in the amount of $45.85 per payphone per month.[14] This monthly amount is to compensate each payphone for an average of 131 access code calls and subscriber 800 calls. The Commission concluded that LEC PSPs would be eligible to receive this compensation by April 15, 1997, once the LEC, among other things, terminated certain subsidies flowing to its payphone operations.[15]

6. In the Order on Reconsideration, the Commission concluded that to be eligible to receive compensation, a LEC must be able to certify the following:

1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective

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10 S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

11 47 U.S.C. § 276(b)(1).

12 Payphone Order at paras. 11-19.

13 Id. at paras. 48-76.

14 Id. at paras. 119-126.

15 Order on Reconsideration at para. 131.

interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.[16]

In addition, the Commission clarified "that the requirements of the Report and Order apply to inmate payphones that were deregulated in an earlier order."[17]

7. The Commission also applied additional requirements to those LECs that are BOCs:

> In addition to the requirements for all other LECs, BOCs must also have approved [comparably efficient interconnection ("CEI")] plans for basic payphone services and unbundled functionalities prior to receiving compensation. Similarly, prior to the approval of its [CEI] plan, a BOC may not negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from their payphones.[18]

8. In the Order on Reconsideration, the Commission concluded that where LECs have already filed intrastate tariffs for payphone services, states may, after considering the requirements of the Order on Reconsideration, the Payphone Order, and Section 276, conclude: (1) that existing tariffs are consistent with the requirements of the Payphone Order, as revised in the Order on Reconsideration, and (2) that in such case no further filings are required.[19]

III. LIMITED WAIVER PERTAINING TO STATE TARIFFING REQUIREMENTS

A. Background

9. The Commission concluded in the Order on Reconsideration that LECs are

[16] Id.

[17] Id. citing Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force, Declaratory Ruling, 11 FCC Rcd 7362 (1996) ("Inmate Services Order"); Petitions for Waiver and Partial Reconsideration or Stay of Inmate-Only Payphones Declaratory Ruling, Order, 11 FCC Rcd 8013 (Com. Car. Bur. 1996) ("Inmate Services Waiver Order").

[18] Order on Reconsideration at para. 132.

[19] Id. at para. 163.

required to tariff basic payphone lines (smart, dumb, and inmate) at the state level only.[20] Unbundled features and functions provided to others and taken by a LEC's payphone operations, however, must be tariffed in both the intrastate and interstate jurisdictions.[21] In addition, in the Payphone Order, the Commission required that, pursuant to the mandate of Section 276(b)(1)(B), incumbent LECs must remove from their intrastate rates any charges that recover the costs of payphones. The Payphone Order required that states determine the intrastate rate elements that must be removed to eliminate any intrastate subsidies. These revised rates must be effective no later than April 15, 1997.[22]

10. In the recent Bureau Waiver Order, we emphasized that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding, except as waived in the Bureau Waiver Order, before the LECs' payphone operations are eligible to receive the payphone compensation provided by that proceeding. The requirements for intrastate tariffs are: (1) that payphone service intrastate tariffs be cost-based, consistent with Section 276, nondiscriminatory and consistent with Computer III tariffing guidelines;[23] and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates.[24] We stated in the Bureau Waiver Order that LEC intrastate tariffs must comply with these requirements by April 15, 1997 in order for the payphone operations of the LECs to be eligible to receive payphone compensation. The Bureau Waiver Order also clarified the unbundled features and functions subject to the requirements of the Payphone Proceeding.[25]

11. We noted in the Bureau Waiver Order that the guidelines for state review of intrastate tariffs are essentially the same as those included in the Payphone Order for federal tariffs [26] On reconsideration, the Commission stated that although it had the authority under Section 276 to require federal tariffs for payphone services, it delegated some of the tariffing requirements to the state jurisdiction. The Order on Reconsideration required that state tariffs for payphone services meet the requirements outlined above.[27] The Order on Reconsideration

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[20] Id. at paras. 162-165. The Commission provided guidelines pursuant to which the states are to review the state tariffs subject to the Payphone Reclassification Proceeding. Id. at para. 163.

[21] Id. at paras. 162-165.

[22] Payphone Order at para. 186

[23] Order on Reconsideration at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at para. 163, n. 492.

[24] Payphone Order at para. 186.

[25] Bureau Waiver Order at paras. 15-19.

[26] Id. at para. 32.

[27] See para. 6, above.

provides that states that are unable to review these tariffs may require the LECs to file the tariffs with the Commission.[28]

12. The Bureau Waiver Order also clarified that, for purposes of meeting all of the requirements necessary to receive payphone compensation, the question of whether a LEC has effective intrastate tariffs is to be considered on a state-by-state basis. Under this approach, assuming the LEC has complied with all of the other compliance list requirements,[29] if a LEC has effective intrastate tariffs in State X and has filed tariffs in State Y that are not yet in effect, then the LEC PSP will be able to receive payphone compensation for its payphones in State X but not in State Y. The intrastate tariffs for payphone services, including unbundled features, and the state tariffs removing payphone equipment costs and subsidies must be in effect for a LEC to receive compensation in a particular state.

B. Request for Waiver and Comments

13. On April 10, 1997, the RBOC Coalition, joined by Ameritech, requested that the Commission grant a limited waiver to extend for 45 days the requirement that a LEC's intrastate tariffs for payphone services comply with the federal guidelines set forth in paragraph 163 of the Order on Reconsideration, specifically that those tariffs satisfy the "new services"[30] test.[31] It requests that this 45-day period correspond to the same period of time that the Commission granted in its April 4, 1997 Bureau Waiver Order for limited waiver of the LECs' federal tariffs.[32] The RBOC Coalition states that it is not seeking a waiver of the requirement that all of the BOCs have effective intrastate tariffs by April 15, 1997 for basic payphone lines and unbundled features and functions.[33]

14. In support of its request, the RBOC Coalition argues that none of the BOCs "understood the payphone orders to require existing, previously-tariffed intrastate payphone

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[28] Order on Reconsideration at para. 163.

[29] See id. at paras. 131-132.

[30] The Order on Reconsideration states that "[t]he new services test required in the Report and Order is described at 47 C.F.R. Section 61.49(g)(2). See also Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79, 6 FCC Rcd 4524, 4531(1991) at paras 38-44." Order on Reconsideration at para. 163, n. 492.

[31] Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 10, 1997) ("RBOC Request"). Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 11, 1997) ("RBOC Clarification Letter").

[32] RBOC Request at 1.

[33] RBOC Clarification Letter at 1.

services, such as the COCOT line, to meet the Commission's new services test."[34] It further argues that, in some states, there may be a discrepancy between the existing state tariff rates and state tariffs that comply with the new services test, which would require the LEC to file new tariff rates.[35] In most states, however, the RBOC Coalition states, "ensuring that previously tariffed payphone services meet the new services test . . . should not be too problematic."[36] The RBOC Coalition argues that this 45-day period would allow the LECs to file new intrastate tariffs in the states where it is necessary without delaying its eligibility to receive compensation.[37] It also states that special circumstances exist for a waiver in that the federal new services test had not previously been applied to existing state services, and that the LECs did not understand until the release of the Bureau Waiver Order that the Commission meant to require application of this test to those services.[38] The RBOC Coalition also states that "[e]ach LEC will undertake to file with the Commission a written ex parte document, by April 15, 1997, attempting to identify those tariff rates that may have to be revised."[39] In addition, the RBOCs state that they voluntarily commit "to reimburse or provide credit to those purchasing the services back to April 15, 1997". . . "to the extent that the new tariff rates are lower than the existing ones."[40]

15. In ex parte documents filed in response to the submission of the RBOC Coalition, AT&T and MCI each argue that there is no basis for the BOCs' claim that they did not understand that basic intrastate payphone tariffs had to comply with the Commission's "new services" test.[41] In addition, Sprint filed an ex parte document stating that "[w]hether or not the RBOCs exercised good faith in ignoring the plain language of paragraph 163 of the Reconsideration Order . . . is beside the point[,]" because the RBOCs should not be entitled to receive compensation unless they are in compliance with all of the requirements of Section 276 and the Commission's rules.[42] Both MCI and Sprint oppose the RBOC Coalition's request for

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[34] Id. at 1.

[35] Id.

[36] Id.

[37] Id. at 2.

[38] Id. at 3.

[39] Id.

[40] Id.

[41] Ex Parte Letter of E.E. Estey, Government Affairs Vice President, AT&T to William Caton, Acting Secretary, FCC (April 11, 1997) ("AT&T Letter"); Ex Parte Letter of Mary Sisak, Senior Counsel, MCI to Mary Beth Richards, Deputy Chief Common Carrier Bureau, FCC (April 11, 1997) ("MCI Letter").

[42] Ex Parte Letter of Richard Juhnke, General Attorney, Sprint to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 11, 1997) ("Sprint Letter").

a waiver.[43] AT&T states, however, that it takes no position on the merits of the RBOC Coalition's request for a waiver, "provided that all necessary cost-based tariffs are in place within the waiver period established by the Bureau's April 4, 1997 Order."[44]

16. More specifically, AT&T contends that the Commission should reiterate that a LEC is not eligible for payphone compensation "until it has provided proof of state action verifying the LEC's compliance with Section 276[,]" particularly with regard to the elimination of intrastate payphone subsidies.[45] AT&T states that the available evidence, namely the "wide and unexplained gap between the reasonably expected rate impacts of the removal of LEC payphone equipment from their regulated accounts and recent actual intrastate rate reductions," suggest that LECs have not removed intrastate payphone subsidies.[46] MCI argues that while there will be no harm to the BOCs if they are required to have effective intrastate tariffs before they receive compensation, the IXCs that are required to pay the compensation will be harmed because the BOCs will be receiving the compensation provided by the Payphone Reclassification Proceeding while they are still recovering payphone costs through tariffed services.[47] MCI also argues that the request of the RBOC Coalition would be properly treated as an untimely petition for reconsideration of the Commission's payphone orders.[48] Sprint contends that the practical effect of granting the relief requested by the RBOC Coalition would be to allow the BOCs to receive compensation before they have in effect cost-based rates at the state level for their payphone services.[49] Sprint contends further that it is inconceivable that this "premature imposition of [the compensation] burden on IXCs and their customers could be squared with the public interest . . .".[50] On the other hand, Sprint states that it would not object to allowing the LECs to defer the effective date of the reductions in their interstate common carrier line reductions in those states where they have yet to fulfill all of the requirements for compensation.[51]

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[43] MCI Letter at 1, Sprint Letter at 1.

[44] AT&T Letter at 1.

[45] Id. at 3. AT&T further contends that "[s]pecifically, the Commission should make it clear that no LEC is entitled to receive payphone compensation in any state until (1) it provides evidence that its state commission has actually considered these matters and (2) the state has affirmatively determined that all payphone subsidies have been eliminated from intrastate rates." Id. (emphasis in the original).

[46] Id.

[47] MCI Letter at 1.

[48] Id. at 2.

[49] Sprint Letter at 2

[50] Id.

[51] Id. at 3.

17. The American Public Communications Council ("APCC"), a trade association of independent PSPs, contends in an ex parte filing that there was no ambiguity in the Payphone Reclassification Proceeding that existing payphone service tariffs are subject to the "new services" test.[52] APCC further contends that allowing the LECs to collect compensation before "complying with a key condition for any competitive telecommunications market -- cost-based interconnection with bottleneck facilities -- would be contrary to the basic purposes of the Act and the [Payphone Reclassification Proceeding]."[53] APCC proposes, instead, that the LECs should be allowed "to defer the effective date of . . . detariffing requirements for a 90-day period to allow them to bring their state payphone services tariffs into compliance with the [Payphone Reclassification Proceeding], provided that the LEC refiles all its state-tariffed services offered to PSPs, so as to ensure state commissions an opportunity to review all payphone interconnection services under the required uniform pricing standard."[54] APCC argues that the Commission "must simply order all tariffs to be refiled."[55]

C. Waiver

18. Upon reviewing the contentions of the RBOC Coalition and the language it cites from the two orders in the Payphone Reclassification Proceeding, we conclude that while the individual BOCs may not be in full compliance with the intrastate tariffing requirements of the Payphone Reclassification Proceeding, they have made a good faith effort to comply with the requirements. The RBOC Coalition concedes that the Commission's payphone orders, as clarified by the Bureau Waiver Order, mandate that the payphone services a LEC tariffs at the state level are subject to the new services test and that the requisite cost-support data must be submitted to the individual states.[56] In addition, the RBOC Coalition states that it will take whatever action is necessary to comply with the Commission's orders in order to be eligible to receive payphone compensation at the earliest possible date.[57] Therefore, we adopt this Order, which contains a limited waiver of the federal guidelines for intrastate tariffs, specifically the requirement that LECs have filed intrastate payphone service tariffs as required by the Order on Reconsideration and the Bureau Waiver Order that satisfy the new services test, and that effective intrastate payphone service tariffs comply with the "new services" test of the federal guidelines for the purpose of allowing a LEC to be eligible to receive payphone compensation, as discussed below. The existing intrastate tariffs for payphone services will continue in effect until the intrastate

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[52] Ex Parte Letter of Albert Kramer, Counsel, APCC to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (April 11, 1997) ("APCC Letter").

[53] Id. at 2.

[54] Id. at 3 (emphasis in the original).

[55] Id. (emphasis in the original).

[56] RBOC Request at 1-3.

[57] Id.

tariffs filed pursuant to the Order on Reconsideration, the Bureau Waiver Order and this Order become effective. Because other LECs may also have failed to file the intrastate tariffs for payphone services that comply with the "new services" test of the federal guidelines, we apply this limited waiver to all LECs, with the limitations set forth herein.

19. Consistent with our conclusions above and in the interests of bringing LECs into compliance with the requirements of the Payphone Reclassification Proceeding, we waive for 45 days from the April 4, 1997 release date of the Bureau Waiver Order the requirement that LEC intrastate tariffs for payphone services comply with the "new services" test of the federal guidelines, as set forth in paragraph 163 of the Order on Reconsideration and clarified in the Bureau Waiver Order. Pursuant to the instant Order, LECs must file intrastate tariffs for payphone services, as required by the Payphone Reclassification Proceeding consistent with all the requirements set forth in the Order on Reconsideration, within 45 days of the April 4, 1997 release date of the Bureau Waiver Order. Any LEC that files these intrastate tariffs for payphone services within 45 days of the release date of the Bureau Waiver Order will be eligible to receive the payphone compensation provided by the Payphone Reclassification Proceeding as of April 15, 1997, as long as that LEC has complied with all of the other requirements set forth in paragraph 131 (and paragraph 132 for the BOCs) of the Order on Reconsideration, subject to the clarifications and limited waiver in the Bureau Waiver Order.[58] Under the terms of this limited waiver, a LEC must have in place intrastate tariffs for payphone services that are effective by April 15, 1997. This waiver permits the LEC to file intrastate tariffs that are consistent with the "new services" test of the federal guidelines set forth in the Order on Reconsideration, as clarified by the Bureau Waiver Order.[59] The existing intrastate payphone service tariffs will continue in effect until the intrastate tariffs filed pursuant to this Order become effective.[60]

20. The RBOC Coalition and Ameritech have committed, once the new intrastate tariffs are effective, to reimburse or provide credit to its customers for these payphone services from April 15, 1997, if newly tariffed rates, when effective, are lower than the existing rates. This action will help to mitigate any delay in having in effect intrastate tariffs that comply with the guidelines required by the Order on Reconsideration, including the concern raised by MCI that the subsidies from payphone services will not have been removed before the LECs receive payphone compensation.[61] A LEC who seeks to rely on the waiver granted in the instant

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[58] Because the industry has elected to bill for and pay out compensation on a quarterly basis, the actual payment for compensation that begins to accrue on April 15, 1997 will not be made until after the requisite intrastate tariffs are filed.

[59] Bureau Waiver Order at paras. 29-33.

[60] The states must act on the tariffs filed pursuant to this Order within a reasonable period of time. The Commission retains jurisdiction under Section 276 to ensure that all requirements of that statutory provision and the Payphone Reclassification Proceeding, including the intrastate tariffing of payphone services, have been met. 47 U.S.C. § 276.

[61] Order on Reconsideration at para. 163.

Order must also reimburse their customers or provide credit, from April 15, 1997, in situations where the newly tariffed rates are lower than the existing tariffed rates. We note, in response to the arguments raised by the IXCs, that because this Order does not waive the requirement that subsidies be removed from local exchange service and exchange access services, the "harm" to the IXCs resulting from the delayed removal of subsidies from some intrastate payphone service tariffs will be limited.

21. We conclude that the waiver we grant here, which is for a limited duration to address a specific compliance issue, is consistent with, and does not undermine, the rules adopted by the Commission in the Payphone Reclassification Proceeding. Therefore, we reject the various alternatives to granting a waiver that were suggested by APCC and the IXCs. More specifically, we conclude that APCC's proposal to require the refiling of all intrastate payphone service tariffs would unduly delay, and possibly undermine, the Commission's efforts to implement Section 276 and the congressional goals of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public. . .".[62] In response to Sprint's proposal that we delay the effective date of the LECs' interstate carrier common line reductions, we conclude that the better approach would be to evaluate requests for such treatment by individual LECs on a case-by-case basis. In addition, we decline to treat the request of the RBOC Coalition as an untimely petition for reconsideration of the Commission's rules, because the RBOC Coalition does not seek reconsideration of the rules adopted in the Payphone Reclassification Proceeding, but instead seeks additional time, in a specific, limited circumstance, to comply with those rules.

22. In response to AT&T's arguments that a LEC must show proof that its intrastate tariffs have removed payphone subsidies consistent with Section 276, we note the Commission concluded that "[t]o receive compensation a LEC must be able to certify"[63] that it has satisfied each of the individual prerequisites to receiving the compensation mandated by the Payphone Reclassification Proceeding.[64] The Commission did not require that the LECs file such a certification with it. Nothing in the Commission's orders, however, prohibits the IXCs obligated to pay compensation from requiring that their LEC payees provide such a certification for each prerequisite. Such an approach is consistent with the Commission's statement that "we leave the details associated with the administration of this compensation mechanism to the parties to determine for themselves through mutual agreement."[65]

23. Waiver of Commission rules is appropriate only if special circumstances

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62 47 U.S.C. § 276(b)(1).

63 Order on Reconsideration at para. 131 (emphasis added).

64 See para. 6, above.

65 Order on Reconsideration at para. 115.

warrant a deviation from the general rule[66] and such deviation serves the public interest.[67] Because the LECs are required to file, and the states are required to review, intrastate tariffs for payphone services consistent with federal guidelines, which, in some cases, may not have been previously filed in this manner at the intrastate level, we find that special circumstances exist in this case to grant a limited waiver of brief duration to address this responsibility. In addition, for the reasons stated above, our grant of a waiver in this limited circumstance, does not undermine, and is consistent with, the Commission's overall policies in CC Docket No. 96-128 to reclassify LEC payphone assets and ensure fair PSP compensation for all calls originated by payphones. Moreover, the states' review of the intrastate tariffs that are the subject of this limited waiver will enable them to determine whether these tariffs have been filed in accordance with the Commission's rules, including the "new services" test. Accordingly, we grant a limited waiver for 45 days from the April 4, 1997 release date of the Bureau Waiver Order the requirement that LEC intrastate tariffs for payphone services comply with the "new services" test of the federal guidelines, as set forth in paragraph 163 of the Order on Reconsideration, subject to the terms discussed herein. This Order does not waive any of the other requirements set forth in paragraphs 131-132 of the Order on Reconsideration.[68]

IV. CONCLUSION

24. In this Order, the Bureau grants a limited waiver of the Commission's requirement that effective intrastate tariffs for payphone services be in compliance with federal guidelines, specifically that the tariffs comply with the "new services" test, as set forth in the Payphone Reclassification Proceeding. LECs must comply with this requirement, among others, before they are eligible to receive the compensation from IXCs that is mandated in that proceeding.

25. Because some LEC intrastate tariffs for payphone services are not in full compliance with the Commission's guidelines, we grant all LECs a limited waiver until May 19, 1997 to file intrastate tariffs for payphone services consistent with the guidelines established in the Order on Reconsideration, subject to the terms discussed herein. This waiver enables LECs to file intrastate tariffs consistent with the "new services" test of the federal guidelines required by the Order on Reconsideration and the Bureau Waiver Order, including cost support data, within 45 days of the April 4, 1997 release date of the Bureau Waiver Order and remain eligible to receive payphone compensation as of April 15, 1997, as long as they are in compliance with all of the other requirements set forth in the Order on Reconsideration. Under the terms of this limited waiver, a LEC must have in place intrastate tariffs for payphone services that are effective by April 15, 1997. The existing intrastate tariffs for payphone services will continue in effect until the intrastate tariffs filed pursuant to the Order on Reconsideration and this Order become

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[66] Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

[67] WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

[68] Id

effective. A LEC who seeks to rely on the waiver granted in the instant Order must reimburse its customers or provide credit from April 15, 1997 in situations where the newly tariffed rates, when effective, are lower than the existing tariffed rates. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.

V. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to Sections 4(i,), 5(c), 201-205, 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 201-205, 276, and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that limited waiver of the Commission's requirements to be eligible to receive the compensation provided by the Payphone Reclassification Proceeding, CC Docket No. 96-128, IS GRANTED to the extent stated herein.

27. IT IS FURTHER ORDERED that this Order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Mary Beth Richards for

Regina M. Keeney
Chief, Common Carrier Bureau

Exhibit B

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 97-678

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-128
Pay Telephone Reclassification	)	
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

ORDER

Adopted: April 4, 1997 Released: April 4, 1997

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this Order, the Common Carrier Bureau ("Bureau") clarifies and grants a limited waiver of the Commission's interstate tariffing requirements[1] for unbundled features and functions, as set forth in the Payphone Reclassification Proceeding, CC Docket No. 96-128.[2] Local exchange carriers ("LECs") must comply with these requirements, among others, before they are eligible to receive the compensation from interexchange carriers ("IXCs") that is mandated in that proceeding. Because some LECs are not in full compliance with the Commission's federal tariffing requirements for unbundled features and functions under the Payphone Order and Order on Reconsideration, we grant all LECs a limited waiver of the deadline for filing the federal tariffs for unbundled features and functions, to the extent necessary, to enable LECs to file the required federal tariffs within 45 days after the release of this Order, with a scheduled effective date no later than 15 days after the date of filing. In addition, each individual Bell Operating Company ("BOC") must file a written ex parte document, by April 10, 1997, advising on the status of intrastate tariffs for the unbundled features and functions that it has not yet federally tariffed, and stating that it commits to filing federal tariffs for such features

1 For purposes of this Order, the term "intrastate tariff" refers to a tariff filed in the state jurisdiction and the term "interstate tariff" refers to a tariff filed in the federal jurisdiction.

2 Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, Report and Order, FCC 96-388 (rel. Sept. 20, 1996) ("Payphone Order"); Order on Reconsideration, FCC 96-439 (rel. Nov. 8, 1996) ("Order on Reconsideration"), appeal docketed sub nom. Illinois Public Telecommunications Assn. v. FCC and United States, Case No. 96-1394 (D.C. Cir., filed Oct. 17, 1996) (both orders together "Payphone Reclassification Proceeding").

and functions within 45 days of the release date of this Order. Submission of this ex parte is necessary before the Bureau may act on their pending comparably efficient interconnection ("CEI") plans.[3] We also waive the requirement, for a period of 60 days from the release date of this Order, that these interstate tariffs for unbundled features and functions be effective before the LECs are eligible to receive payphone compensation. If, however, a LEC fails to file all of the requisite federal tariffs for unbundled features and functions within 45 days of the release date of the instant Order, it will not be in compliance with the Commission's requirements and, consequently, will not be eligible to receive payphone compensation. This Order does not waive any of the other requirements with which the LECs must comply before receiving compensation.[4]

2. This Order also restates that LECs must comply with all of the enumerated requirements established in the Payphone Reclassification Proceeding before the LECs' payphone operations are eligible to receive payphone compensation. Tariffs for payphone services, including unbundled features and functions filed with the states, pursuant to the Payphone Reclassification Proceeding, must be cost-based, consistent with Section 276, nondiscriminatory, and consistent with Computer III tariffing guidelines.[5] In addition, the Payphone Reclassification Proceeding required states to ensure that payphone costs for unregulated equipment and subsidies are removed from the intrastate local exchange service and exchange access service rates.[6] These intrastate tariffing requirements must be met and the tariffs effective by April 15, 1997, for the LEC's payphone operations to receive the payphone compensation provided by the Payphone Reclassification Proceeding.[7]

3. The Bureau takes this action, on its own motion, pursuant to the authority delegated to it by the Commission in the Order on Reconsideration to determine whether a LEC has met the requirements of the Payphone Reclassification Proceeding prior to receiving compensation.[8] The instant Order advances the twin goals of Section 276 of the Act by promoting both competition among payphone service providers ("PSPs") and the widespread deployment of payphone services to the benefit of the general public.[9]

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[3] In addition to filing the ex parte with the Secretary in CC Docket No. 96-128, each of the BOCs must also file a copy of its ex parte in its CEI plan proceeding, also by April 10, 1997.

[4] See Order on Reconsideration at paras. 131-132.

[5] Id. at para. 163. As stated in the Order on Reconsideration, the intrastate tariffs are subject to the new services test. Order on Reconsideration at Id., n. 492.

[6] See, e.g., Payphone Order at paras. 180-187.

[7] Order on Reconsideration at paras. 131-132.

[8] Id. at para. 132. See also id. at para. 163. These delegations of authority to the Bureau are consistent with Section .091 of the Commission's rules. 47 CFR § 0.91.

[9] 47 U.S.C. § 276(b)(1).

II. BACKGROUND

4. In the Payphone Reclassification Proceeding, the Commission noted that Telecommunications Act of 1996 fundamentally changed telecommunications regulation. It stated that the 1996 Act erects a "pro-competitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[10] To that end, the Commission advanced the twin goals of Section 276 of the Act of "promot[ing] competition among payphone service providers and promot[ing] the widespread deployment of payphone services to the benefit of the general public. . ."[11] It sought to eliminate those regulatory constraints that inhibit the ability both to enter and exit the payphone marketplace, and to compete for the right to provide services to customers through payphones. At the same time, the Commission recognized that a transition period is necessary to eliminate the effects of some long-standing barriers to full competition in the payphone market. For this reason, it concluded that it would continue, for a limited time, to regulate certain aspects of the payphone market, but only until such time as the market evolves to erase these sources of market distortions.[12]

5. In the Payphone Order, the Commission concluded that, consistent with Section 276 of the Act, PSPs are to be compensated for "each and every completed intrastate and interstate call" originated by their payphones.[13] For the first year of the compensation provided by the Payphone Order, the Commission required those IXCs with annual toll revenues in excess of $100 million to pay PSPs proportionate shares, based on their respective market shares, of interim, flat-rated compensation in the amount of $45.85 per payphone per month.[14] This monthly amount is to compensate each payphone for an average of 131 access code calls and subscriber 800 calls. The Commission concluded that LEC PSPs would be eligible to receive this compensation by April 15, 1997, once the LEC, among other things, terminated certain subsidies flowing to its payphone operations.[15]

6. In the Order on Reconsideration, the Commission concluded that to be eligible to receive compensation, a LEC must be able to certify the following:

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[10] S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996).

[11] 47 U.S.C. § 276(b)(1).

[12] Payphone Order at paras. 11-19.

[13] Id. at paras. 48-76.

[14] Id. at paras. 119-126.

[15] Order on Reconsideration at para. 131.

1) it has an effective cost accounting manual ("CAM") filing; 2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge ("SLC") revenue; 3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate subsidies; 4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment ("CPE") and related costs as required in the Report and Order; 5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones); and 6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.[16]

7. The Commission also noted that additional requirements apply to those LECs that are BOCs:

> In addition to the requirements for all other LECs, BOCs must also have approved [comparably efficient interconnection ("CEI")] plans for basic payphone services and unbundled functionalities prior to receiving compensation. Similarly, prior to the approval of its [CEI] plan, a BOC may not negotiate with location providers on the location provider's selecting and contracting with the carriers that carry interLATA calls from their payphones.[17].

III. CLARIFICATION AND LIMITED WAIVER OF FEDERAL TARIFFING REQUIREMENTS FOR UNBUNDLED FEATURES AND FUNCTIONS

A. Background

8. In the Payphone Order, the Commission required that LECs tariff payphone services at the federal level.[18] The Payphone Order also required that network services provided by a LEC to its payphone operations must be federally tariffed as well.[19] In the Order on Reconsideration, the Commission required LECs to file tariffs for the basic payphone services and unbundled functionalities in the intrastate and interstate jurisdictions. Basic payphone services for instrument-implemented "smart" payphones, "dumb" payphones, and inmate payphones, including any features and functions that the LEC has unbundled from the basic payphone line, which enable independent providers to offer payphone services, and unbundled features and functions provided by a LEC to its payphone operations, must be tariffed at the state

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16 Id.

17 Id. at para. 132.

18 Payphone Order at para. 147.

19 Id. at para. 148.

level.[20] The Commission also required that the unbundled payphone features and functions provided by a LEC to others and the unbundled features and functions provided by a LEC to its payphone operations must be tariffed in the federal jurisdiction.[21] The Commission also stated in the Payphone Order[22] that while it did not require LECs to provide additional unbundling of features for payphone services by April 15, 1997, states could require that LECs provide further unbundling, and further unbundling could be requested by PSPs from BOCs subsequently through the 120-day Open Network Architecture ("ONA") service process.[23]

9. In addition, the Payphone Order required that in its CEI plan a BOC must explain how it will provide basic payphone services and unbundled functionalities and options taken by the BOC.[24] The Payphone Order required the filing of CEI plans for payphone services to ensure that the BOCs provide payphone services in a nondiscriminatory manner and consistent with other Computer III[25] and ONA requirements.[26] Thus, a BOC must indicate how it plans to

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[20] In the Order on Reconsideration, the Commission concluded that even though it retained authority over payphone tariffs, it delegated to the states certain responsibilities. The Commission indicated, however, that if a state was not able to respond to those requirements the state could require that LECs in its state file with the Commission instead of the state for those responsibilities delegated to the state. Id. at para. 163.

[21] Id. at paras. 162-165.

[22] Payphone Order at para. 148.

[23] Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1 (1988) (BOC ONA Order), recon., 5 FCC Rcd 3084 (1990) (BOC ONA Reconsideration Order); 5 FCC Rcd 3103 (1990) (BOC ONA Amendment Order), erratum, 5 FCC Rcd 4045, pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993), recon., 8 FCC Rcd 97 (1993) (BOC ONA Amendment Reconsideration Order); 6 FCC Rcd 7646, 7649-50 (1991) (BOC ONA Further Amendment Order); 8 FCC Rcd 2606 (1993) (BOC ONA Second Further Amendment Order), pet. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

Under their ONA plans, BOCs must respond within 120 days to requests from competing enhanced service providers for new basic ONA services. BOCs must base their decisions on whether to provide these new services on the ONA selection criteria set forth in the Computer III Phase I Order: market area demand, utility as perceived by the requesting PSP, and costing and technical feasibility. See generally ONA Interim Waiver Order, 10 FCC Rcd at 1728-29.

[24] Payphone Order at para. 204.

[25] Amendment of Section 64.702 of the Commission's Rules and Regulations (Computer III), CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986) (Phase I Order), recon., 2 FCC Rcd 3035 (1987) (Phase I Reconsideration Order), further recon., 3 FCC Rcd 1135 (1988) (Phase I Further Reconsideration Order), second further recon., 4 FCC Rcd 5927 (1989) (Phase I Second Further Reconsideration Order); Phase I Order and Phase I Reconsideration Order vacated California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Phase II, 2 FCC Rcd 3072 (1987) (Phase II Order), recon., 3 FCC Rcd 1150 (1988) (Phase II Reconsideration Order), further recon., 4 FCC Rcd 5927 (1988) (Phase II Further Reconsideration Order); Phase II Order vacated, California v. FCC, 905 F.2d 1217 (9th Cir. 1990); Computer III Remand Proceeding, 5 FCC Rcd 7719 (1990) (ONA Remand Order), recon., 7 FCC Rcd 909 (1992), pets. for review denied, California v. FCC, 4 F.3d 1505 (9th Cir. 1993); Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company

unbundle, and associate with a specific rate element in a tariff, the basic services and basic service functions that underlie its provision of payphone service. In addition, any options available to the BOC in the provision of such basic services or functions would be included in the unbundled offerings.[27]

10. Finally, in a "compliance list" paragraph in the Order on Reconsideration, the Commission listed the requirements with which a LEC must comply to receive payphone compensation under the Commission's rules.[28] This compliance list requires the federal tariffing of unbundled features associated with payphone lines.[29]

11. The Order on Reconsideration required that LECs file federal tariffs by January 15, 1997, to be effective no later than April 15, 1997.[30] A review of the federal tariffs filed by LECs and those detailed by the BOCs in their CEI plans revealed that some of the BOCs and other LECs had not filed federal tariffs for all the unbundled features and functions required by the Payphone Reclassification Proceeding. In response to staff inquiries, several parties filed ex parte presentations concerning LEC compliance with the requirements of the two payphone orders.

B. Comments

12. In an ex parte filing, the RBOC Coalition[31] states that it agrees that the Commission's payphone orders impose a federal tariffing requirement.[32] It argues, however, that the federal tariffing applies only to network-based, payphone-specific features and functions.[33] The RBOC Coalition argues further that among these network-based, payphone-specific features

Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order), BOC Safeguards Order vacated in part and remanded, California v. FCC, 39 F.3d 919 (9th Cir. 1994) (California III).

[26] Payphone Order at para. 202.

[27] Id. at para. 204.

[28] See para. 6, above.

[29] Order on Reconsideration, at para. 131.

[30] Order on Reconsideration at para. 163.

[31] The RBOC Coalition consists of all of the BOCs except Ameritech.

[32] Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau (March 19, 1997).

[33] Id.

and functions, only those that a LEC provides to its own payphone operations must be tariffed.[34] The RBOC Coalition notes, however, that "[w]hatever federal tariffing requirements ultimately are imposed, the Coalition members will of course comply with those requirements."[35] It states that it will support and comply with any reasonable resolution of the federal tariffing issue, "so long as it does not delay the rapid transformation of the payphone industry that Congress intended," or defer the legislative intent behind Section 276 to promote both competition among PSPs and the widespread deployment of payphone services.[36]

13. In addition, both the RBOC Coalition and the American Public Communications Council ("APCC"), which represents independent PSPs, filed detailed ex parte presentations that set forth which payphone services they believe must be federally tariffed pursuant to the Payphone Reclassification Proceeding.[37] The RBOC Coalition argues that the Commission's payphone orders establish the principle that federal tariffs cannot be required for a feature unless that feature is unbundled.[38] Therefore, the RBOC Coalition maintains that its individual member BOCs will tariff all network-based, payphone-specific features and functions that they have unbundled, but should not be required to tariff at the federal level any features and functions that they have not unbundled.[39]

14. On the other hand, APCC argues that the Commission intended for the basic payphone line to serve as a building block to which additional features and functions would be added as options, including such options as coin service features, answer supervision, and call blocking and screening.[40] Consequently, APCC contends, each of these services is an "unbundled feature or function" that must be federally tariffed, if the function is used by the LEC, in bundled or unbundled form, to provide payphone service.[41] In addition, APCC argues

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34 Id.

35 Id.

36 Id.

37 Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997); Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997). As discussed below in paragraph 26, a number of other parties also filed ex parte letters, primarily on the state tariffing requirements of the Payphone Reclassification Proceeding, including AT&T, MCI, and GTE.

38 Ex Parte Letter of Michael Kellogg, Counsel, RBOC Coalition to Mary Beth Richards, Deputy Chief, Common Carrier Bureau, FCC (March 25, 1997) at 4-5.

39 Id.

40 Ex Parte Letter of Robert F. Aldrich, Counsel, APCC to William F. Caton, Acting Secretary, FCC (March 27, 1997) at 3.

41 Id. at 3.